

TITLE 7 BUILDING AND LOAN ASSOCIATIONS

CHAPTER 7-01 ORGANIZATION, QUALIFICATION, AND CONSOLIDATION

7-01-01. Definition - Supervision. A corporation mutually operated for the purpose of encouraging homebuilding and thrift among its shareholders and loaning substantially all of its funds to them on real estate mortgage security must be known as a building and loan association, or a savings and loan association, and is under the supervision of the state banking board, which board is charged with the duty of enforcing all laws with respect thereto. Such association must be organized under and governed by the provisions of this title. All building and loan associations organized under the laws of this state must be known as domestic associations. All corporations, societies, organizations, or associations incorporated under the laws of another state, territory, country, or nation for the purpose specified in this title, or carrying on a business of a character similar to that authorized by this title, must be known in this title as foreign corporations.

7-01-02. Scope of title. The provisions of this title apply to and are enforceable against all corporations, limited liability companies, persons, firms, partnerships, associations, trustees, or combinations of persons whatsoever, whether foreign or domestic, organized for building and loan purposes, and whether citizens of this state or otherwise, that transact, or attempt to transact, a building and loan business, or a business of like kind or character, or where by its or their charter, constitution, bylaws, or by declaration of trust, or other device, or by a contract or agreement, the members are required to pay regular installments to a common fund or series, from which fund or series loans are made to said members for the purpose of building homes or buildings, purchasing building sites, or paying off liens or debts against real estate. The name "association" when used in this title includes any of the above named.

7-01-03. Articles of incorporation - Contents. Whenever any number of persons, not less than nine, desires to incorporate a building and loan association, having for their object the conduct and operation of such an association as defined in this title, they shall prepare and file articles of incorporation to that effect in the manner specified in this title. Unless otherwise provided herein the general law governing profit corporations applies to such association. The articles of incorporation must include the following:

1. The name of the association. The name must not be the same as, nor too closely resemble, that in use by any existing corporation established under the laws of this state. The words "building and loan association" or "savings and loan association" must form a part of the name, and only corporations and associations organized under this chapter are entitled to use a name embodying either of said combinations of words. Any association in existence on July 1, 1931, may continue and renew its charter in the name under which it was then operating. Any corporation or association organized or operating under this chapter is authorized to change its name to embody the words "savings and loan association".
2. The principal office, or place of business of the association, which must be within this state.
3. The territory in which such association proposes to operate.
4. The amount of its authorized capital shares and the number of shares into which the same must be divided. Such capital must be divided into shares having a par value of fifty dollars, one hundred dollars, or two hundred dollars.
5. A provision that such association is organized under this chapter for the purpose herein expressed.

6. The name, residence, and occupation of, and a statement of the number of the shares subscribed and the amount of cash paid upon such shares by, each of the persons who subscribed and acknowledged the said articles, a majority of whom must be citizens of this state and who thereafter must be called incorporators.
7. The term of corporate existence, which may not exceed twenty years but which may be extended as provided in this chapter.
8. The number of directors of the association.

Immediately upon the preparation of such articles of incorporation, and before the same are filed in the office of the secretary of state, four copies thereof must be filed in the office of the commissioner of financial institutions for the use of the state banking board.

7-01-03.1. License fees payable by savings and loan or building and loan associations. The secretary of state shall charge and collect license fees from each building and loan or savings and loan association, based upon its authorized share accounts, at the time of:

1. Filing articles of incorporation.
2. Filing articles of amendment increasing the number or value of authorized share accounts.
3. Filing articles of merger or consolidation increasing the number or value of authorized share accounts which the surviving or new association, if a domestic corporation will have authority to issue above the aggregate number or value of share accounts which the savings and loan association have authority to issue.

The license fees must be in the sum of ten dollars per each million dollars of authorized share accounts or increase in authorized share accounts.

The license fees payable on an increase in authorized share accounts must be imposed on the increase in authorized share accounts.

7-01-04. "Amount of capital" defined - Paid in - Maintained. The amount of capital designated in the articles of incorporation is deemed to refer to the par value of the authorized capital shares, and the organization may be completed and business commenced when not less than fifty thousand dollars have been paid in, in cash, and the provisions of this chapter have been complied with. The state banking board may require such additional capital as it may determine necessary to properly serve the area and to protect the public interest. A sum of not less than ten thousand dollars must be maintained and kept on hand by said association at all times.

7-01-05. Contents and adoption of bylaws. Contemporaneously with or immediately following the execution of the articles of incorporation provided for in this chapter, the incorporators, acting in the capacity of directors, shall adopt appropriate bylaws to govern and prescribe the methods by which, and the officers by whom, the business of the association must be conducted. The bylaws must be in conformity with the provisions of this title, and at all times, during the regular hours of business, must be open to the inspection of the members at the association's principal place of business. The bylaws must provide especially for the character and method of conducting the business of the association, with rules governing the addition of shareholders; the sale of its shares; the amount of membership fees; the annual meeting of the shareholders; the annual election and qualification of directors; and the term or period during which such directors shall serve, which must be not less than one year nor more than three years, and the directors must be so elected that as nearly as possible the terms of an equal number must expire each year; the appointment of officers; the adoption, ratification, and amendment of the bylaws, any of which may be either by the shareholders or board of directors;

the method of voting at the annual meeting; and the periodical investigation of the business and condition of such association.

7-01-06. Approval of bylaws by state banking board. No association may commence or continue the transaction of business as a building and loan association until its bylaws are approved by the state banking board. Any changes or amendments made from time to time in such bylaws must be submitted to the state banking board by registered or certified mail for approval, and should the said board fail within sixty days after receipt thereof to advise the association of its disapproval, such changes or amendments thereupon are deemed approved and go into immediate force and effect. In the event of the disapproval of such changes or amendments within the time hereinbefore provided, such changes or amendments do not become effective until modified or amended in the manner and form required by said board to conform to the provisions of this title.

7-01-07. Certificate of state banking board required - Examination by board - Review by court - Federal deposit insurance required. If the articles of incorporation of a proposed association are in due form and regularly executed and the bylaws have been approved as required by this chapter, the state banking board shall ascertain the responsibility, character, and general fitness of the incorporators, whether there is a reasonable need for the existence of the association, and whether or not the public convenience and advantage will be promoted thereby. If the banking board is not satisfied with the result of its investigation, within sixty days after the articles of incorporation and bylaws have been presented to the board, the board shall endorse upon each copy of the articles of incorporation the word "refused", the date of the endorsement, and the reason for the refusal. The board shall return one copy of the articles of incorporation to the proposed incorporators from whom the articles were received. The refusal is conclusive unless the incorporators, within thirty days after the issuance of the notice of refusal, apply to the district court of Burleigh County, North Dakota, for a writ of mandamus to compel the filing of the articles of incorporation and granting of a certificate to do business. A savings and loan association shall, after July 1, 1979, secure federal deposit insurance with an agency or instrumentality of the United States of America of accounts before it is authorized to commence business. Evidence of securing that insurance must be furnished to the commissioner before the certificate of authority is delivered to the savings and loan association.

7-01-08. Action by district court - Appeal. The court may not determine such action in favor of said incorporators unless it appears to the satisfaction of the court that there is an existing need for such association and that the incorporators have the required responsibility, character, and general fitness. An appeal may be taken from the decree of the district court in the same manner as in other mandamus proceedings.

7-01-09. Issuance of certificate by state banking board - Filing of articles. If the state banking board is satisfied from its investigation that a certificate should issue, it, within sixty days after the articles of incorporation and bylaws have been presented to it, shall instruct the commissioner of financial institutions to issue, under the commissioner's hand and official seal, a certificate reciting in substance: that the articles of incorporation and bylaws have been filed in the commissioner's office; that said articles and bylaws conform to all the requirements of this title; that the board has approved the same; that the incorporators are fit and proper persons to conduct the business of a building and loan association as defined in this title; that there is a reasonable need for the existence of said building and loan association; and that the public convenience and advantage will be promoted thereby. Such certificate must be made in quadruplicate and attached to each copy of the articles of incorporation, one of which must be retained by the commissioner, and the other three must be returned to the incorporators who forthwith shall file one copy thereof in the office of the secretary of state, one in the office of the recorder of the county in which the principal place of business of said association is located, and the other must be retained by the association. Immediately upon the receipt of said certified copy, the secretary of state shall issue a certificate of incorporation, whereupon the incorporation of the association is deemed complete.

7-01-10. Promotional contracts prohibited. The state banking board shall refuse authority to commence business to any building and loan association if commissions, contributions, or fees have been paid, or have been contracted to be paid, directly or indirectly by the building and loan association or by anyone to any person, association, or corporation for securing subscriptions for or selling stock in such building and loan association.

7-01-11. Consolidation authorized. Any building and loan association, with the consent and approval of the commissioner of financial institutions, may consolidate with or be taken over by any other association upon such terms as may be authorized by the respective boards of directors of such associations after being authorized to enter into such consolidation by a majority vote of their respective shareholders at any regular or special meeting. This section must be construed to include any association taken over by the commissioner whether in process of liquidation or otherwise.

7-01-12. Conversion into federal association - Procedure. Any building and loan association or other home financing organization by whatever name or style it may be designated, which is eligible to become a federal savings and loan association, may convert itself into a federal savings and loan association by following the procedure herein outlined:

1. At any regular or special meeting of the shareholders of any such association, in either case called to consider such action and held in accordance with the laws governing such association, such shareholders by a two-thirds affirmative vote of those present in person or by proxy may declare by resolution their determination to convert such association into a federal savings and loan association;
2. A copy of the minutes of such meeting of the shareholders verified by the affidavit of the president or vice president and the secretary of the meeting must be filed within ten days after said meeting in the office of the commissioner of financial institutions. Such verified copy of the minutes of such meeting when so filed is presumptive evidence of the holding and of the action of such meeting; and
3. Within a reasonable time and without any unnecessary delay after the adjournment of the meeting of shareholders, the board of directors and officers of such association shall take the action and do all things necessary to make it a federal savings and loan association. Within ten days after receipt of the federal charter, there must be filed in the office of the commissioner a copy of the charter issued to the association by the federal home loan bank board, or a certificate showing the organization of the association as a federal savings and loan association certified by, or on behalf of, the federal home loan bank board. Upon the filing of such instrument, the association shall cease to be a state association and thereafter is a federal savings and loan association.

7-01-13. Supervision after conversion - Transfer of assets - Obligations. At the time when such conversion becomes effective, the association shall cease to be supervised by this state, and all of the property and rights of such association, including all of its right, title, and interest in and to all property of every kind and character, whether real, personal, or mixed, immediately, by operation of law, and without any conveyance or transfer whatsoever and without any further act or deed, shall continue to be vested in the association under its new name and style as a federal savings and loan association and under its new jurisdiction, and such federal savings and loan association shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by it as a state association, and shall continue responsible for all of its obligations as a state association to the same extent as though the conversion had not taken place, and it is expressly provided that the federal savings and loan association is merely a continuation of the state association under a new name and new jurisdiction with such revision of its corporate structure as may be necessary for its proper operation under the new jurisdiction.

7-01-14. State savings and loan association conversion to state bank. A state savings and loan association located in this state which follows the procedure prescribed by the

board to convert into a state bank must be granted a state charter if it meets the provisions of the North Dakota Century Code for the incorporation and chartering of a new state bank. Any requirement that shares must be paid in cash may be satisfied by the exchange of shares of the converted state bank for those of the converting state savings and loan association, which may be valued at no more than their fair cash market value. The procedure for incorporation of a state bank may be modified by the board to the extent made necessary by the difference between an ordinary incorporation and a conversion and no public hearing need be held on a conversion application. A state savings and loan association proposing to convert into a state-chartered bank shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for the examination at an hourly rate sufficient to cover all reasonable expenses of the department of financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions regulatory fund.

7-01-15. Savings association conversion. A federal savings association may convert to a state association under this chapter upon the following terms:

1. The conversion must be approved by vote of the members or shareholders cast in person or by proxy at a special meeting called to consider the action;
2. Notice of the meeting must expressly state the purpose, time, and place of the meeting, and must be mailed, postage prepaid, at least thirty, and not more than sixty, days before the date of the meeting to each member or shareholder of record at the address shown on the association's books;
3. The conversion must be approved by fifty-one percent or more of the votes cast at the meeting; and
4. The conversion must be confirmed by action of applicable federal regulatory authorities and the board.